

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-004326

02/12/2015

HONORABLE DAVID O. CUNANAN

CLERK OF THE COURT  
S. Heras-Antillon  
Deputy

JULIE D FOLCH

SCOTT I PALUMBO

v.

COSMETIC SURGERY INSTITUTE LTD, et al.     DAVID J KLINK

KIMBERLY A KENT

JURY TRIAL SET

East Court Building – Courtroom 711

9:04 a.m. This is the time set for Telephonic Status/Scheduling Conference. All parties appear telephonically. Appearing on behalf of Plaintiff Julie D. Folch is counsel, Scott I. Palumbo. Appearing on behalf of Defendant Thomas G. Kotoske is counsel, Kimberly A. Kent.

A record of the proceedings is made by audio/videotape in lieu of a court reporter.

Discussion is held regarding the status of the case and the parties advise the Court they are prepared to set a trial date. Accordingly,

IT IS ORDERED as follows:

1. Setting a Trial Management Conference on **July 30, 2015 at 9:15 a.m.** (time allotted: 30 minutes). All parties must appear in person and cannot appear telephonically.
2. Setting Trial to a Jury on **August 17-20, 2015; August 24-26, 2015 at 9:30 a.m.** (time allotted: 7 days). PLEASE NOTE: Trial will not proceed on Fridays as

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Fridays are dark days for this division. Counsel are advised that the Court's trial hours are generally as follows: Trial Day One (Jury Selection) will commence at 9:30 a.m., normal Trial Days, Monday through Thursday, 10:00 a.m. to 4:30 p.m. with a lunch recess from noon to 1:30 p.m. daily, and a 15-minute break in the afternoon.

Duties Prior to Trial

3. Dispositive Motions: All dispositive motions, including Rule 56 motions, shall be filed no later than **May 19, 2015**.
4. Motions in Limine: All Motions in Limine shall be filed no later than **July 9, 2015** and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a Motion in Limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(c). A written response to a Motion in Limine may be filed no later than ten (10) calendar days thereafter. The Court may rule on Motions in Limine without oral argument. No replies shall be filed. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any Motion in Limine.

**PLEASE NOTE:** This division requires that all motions, responses, replies and other Court requested filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. No pleadings will be accepted if filed in combination with another.

5. Joint Pretrial Statement: Counsel shall file, no later than **July 23, 2015**, a Joint Pretrial Statement signed by all counsel. In addition to the information required by Rule 16(d) the Joint Pretrial Statement shall include,
  - A Final Trial Witness List. This list shall contain the name of each witness a party actually intends to call at Trial, the day on which they intend to call each witness and the **estimated time needed for direct, cross and re-direct examination**. (see Witness Information Form attached)
  - An agreed upon number of jurors to be seated as the final panel including any alternates, whether or not the alternates will deliberate, and an agreed upon verdict ratio in accordance with the number of jurors deliberating.
  - Whether or not the Rule of Exclusion of Witnesses is being invoked.

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6. Jury Instructions and Voir Dire Questions: Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall file with their Joint Pretrial Statement **(the Judge would appreciate counsel providing a copy of the jury instruction requests on CD, in Microsoft Word)**:
- a) Proposed voir dire questions.
  - b) A joint set of agreed-upon preliminary and final jury instructions and proposed forms of verdicts.
  - c) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 3d Standard 1 - Duty of Jurors. Non-RAJI instructions should be typed. Each instruction should cover only one subject.

Duties at Trial Management Conference

- 7. Counsel shall be prepared to argue Motions in Limine if the Court deems necessary.
- 8. Counsel shall be prepared to discuss:
  - a) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
  - b) Preliminary jury instructions, mini opening statements and voir dire.
  - c) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
  - d) Any special scheduling or equipment issues.
- 9. One day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before the Trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.

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10. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

**Exhibits are due to the Clerk at the Trial Management Conference.**

Counsel may contact the Clerk by telephone at **(602) 506-1470** with questions regarding exhibits. Counsel is required to email the Clerk a copy of the **Final Trial Exhibit List** in Microsoft Word Format.

**IT IS ORDERED:**

1. Exhibits should be separated by a colored sheet of paper with the exhibit number written on front. Each exhibit shall be stapled, clipped or bound.
2. Keep the descriptions of the exhibits simple. Do not use a description that cannot be verified by looking at the document or item. **Do not include Bates numbers** in your description of the exhibits.
3. Exhibits shall be marked numerically and consecutively -- 1, 2, 3 etc. **Do not skip numbers or list as Unused or duplicate.** Numbers will not be skipped or saved in anticipation of additional exhibits to be submitted. Additional exhibits, if necessary, may be marked during the course of trial.
4. Counsel shall eliminate duplication of exhibits as duplicate **exhibits will not** be marked. Counsel shall, therefore, confer regarding exhibits to insure that there are no duplicates.
5. **Do not list depositions** on the exhibit description list as depositions will not be marked as exhibits. Original depositions shall be provided to the Clerk at the time of trial for filing into the court record. Counsel shall retain a copy of the depositions for their use during the trial as the original depositions remain with the Clerk to be used as reference by the trial judge during testimony.  
Blow-up charts and large items may only be used for demonstrative purposes. Counsel may bring blow-up charts and large items for use during trial; however, if counsel would like any blow-up charts or large items marked as an exhibit, they must provide the Clerk with an 8-1/2 x 11 photograph of the item

If a court reporter is required, the Court must receive a written request at least three (3) court days before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

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9:09 a.m. Matter concludes.

**WITNESS INFORMATION FORM**

**WITNESSES FOR PLAINTIFF(S)**

	WITNESS NAME	DIRECT	CROSS
1			
2			
3			

DIRECT & CROSS TOTAL: \_\_\_\_\_

**WITNESSES FOR DEFENDANT(S)**

	WITNESS NAME	DIRECT	CROSS
1			
2			
3			

DIRECT & CROSS TOTAL: \_\_\_\_\_

TOTAL WITNESS TIME ESTIMATE: \_\_\_\_\_

TIME ESTIMATE FOR:	PLAINTIFF		DEFENDANT
OPENING STATEMENT			
CLOSING ARGUMENT	1 <sup>st</sup> :	2 <sup>nd</sup> :	